

SCHEDULES

SCHEDULE 2

Article 4.

EMPLOYMENT PARTICULARS

PART I

ARTICLES 43 TO 43E OF THE NO. 2 ORDER, AS INSERTED

Written particulars of employment

Employers' duty to give statement of employment particulars

43.—(1) Not later than two months after the beginning of an employee's employment with an employer, the employer shall give to the employee a written statement which may, subject to Article 43A(4), be given in instalments before the end of that period.

(2) The statement shall contain particulars of—

- (a) the names of the employer and employee;
- (b) the date when the employment began; and
- (c) the date on which the employee's period of continuous employment began (taking into account any employment with a previous employer which counts towards that period).

(3) The statement shall also contain particulars, as at a specified date not more than seven days before the statement or instalment of the statement containing them is given, of—

- (a) the scale or rate of remuneration or the method of calculating remuneration;
- (b) the intervals at which remuneration is paid (that is, weekly, monthly or other specified intervals);
- (c) any terms and conditions relating to hours of work (including any terms and conditions relating to normal working hours);
- (d) any terms and conditions relating to any of the following—
 - (i) entitlement to holidays, including public holidays, and holiday pay (the particulars given being sufficient to enable the employee's entitlement, including any entitlement to accrued holiday pay on the termination of employment, to be precisely calculated);
 - (ii) incapacity for work due to sickness or injury, including any provision for sick pay; and
 - (iii) pensions and pension schemes;
- (e) the length of notice which the employee is obliged to give and entitled to receive to terminate his contract of employment;
- (f) the title of the job which the employee is employed to do or a brief description of the work for which the employee is employed;

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- (g) where the employment is not intended to be permanent, the period for which it is expected to continue or, if it is for a fixed term, the date when it is to end;
 - (h) either the place of work or, where the employee is required or permitted to work at various places, an indication of that and of the address of the employer;
 - (j) any collective agreements which directly affect the terms and conditions of the employment including, where the employer is not a party, the persons by whom they were made; and
 - (k) where the employee is required to work outside the United Kingdom for a period of more than one month—
 - (i) the period for which he is to work outside the United Kingdom;
 - (ii) the currency in which remuneration is to be paid while he is working outside the United Kingdom;
 - (iii) any additional remuneration payable to him, and any benefits to be provided to or in respect of him, by reason of his being required to work outside the United Kingdom; and
 - (iv) any terms and conditions relating to his return to the United Kingdom.
- (4) Paragraph (3)(d)(iii) shall not apply to the employees of any body or authority if—
- (a) the employees' pension rights depend on the terms of a pension scheme established under any statutory provision; and
 - (b) the body or authority is required by any such provision to give to new employees information concerning their pension rights or the determination of questions affecting their pension rights.

Article 43: supplementary

43A.—(1) If, in the case of a statement under Article 43, there are no particulars to be entered under any of the heads of sub-paragraph (d) or (k) of paragraph (3) of that Article, or under any of the other sub-paragraphs of paragraph (2) or (3) of that Article, that fact shall be stated.

- (2) A statement under Article 43—
- (a) may refer the employee to the provisions of some other document which—
 - (i) the employee has reasonable opportunities of reading in the course of his employment; or
 - (ii) is made reasonably accessible to him in some other way,for particulars of any of the matters specified in Article 43(3)(d)(ii) and (iii); and
 - (b) may refer the employee to the law, or, subject to paragraph (3), to the provisions of any collective agreement which directly affects the terms and conditions of the employment, for particulars of either of the matters specified in Article 43(3)(e).
- (3) A statement under Article 43 may refer the employee to the provisions of a collective agreement under paragraph (2)(b) if, and only if, it is an agreement which—
- (a) the employee has reasonable opportunities of reading in the course of his employment; or
 - (b) is made reasonably accessible to him in some other way.
- (4) The particulars required by Article 43(2) and the following provisions of Article 43(3)—
- (a) sub-paragraphs (a) to (c);
 - (b) sub-paragraph (d)(i);
 - (c) sub-paragraph (f); and

(d) sub-paragraph (h),
shall be included in a single document (in Article 43C referred to as the “principal statement”).

(5) Where before the end of the period of two months after the beginning of his employment an employee is to begin to work outside the United Kingdom for a period of more than one month, the statement under Article 43 shall be given to him not later than the time when he leaves the United Kingdom in order to begin so to work.

(6) A statement shall be given to a person under Article 43 notwithstanding that his employment ends before the end of the period within which the statement is required to be given.

Statement to include note about disciplinary procedures

43B.—(1) A statement under Article 43 shall include a note—

- (a) specifying any disciplinary rules applicable to the employee or referring the employee to the provisions of a document which—
 - (i) the employee has reasonable opportunities of reading in the course of his employment; or
 - (ii) is made reasonably accessible to him in some other way,and which specifies such rules;
- (b) specifying, by description or otherwise—
 - (i) a person to whom the employee can apply if he is dissatisfied with any disciplinary decision relating to him; and
 - (ii) a person to whom the employee can apply for the purpose of seeking redress of any grievance relating to his employment,and the manner in which any such application should be made;
- (c) where there are further steps consequent on any such application, explaining those steps or referring to the provisions of a document which—
 - (i) the employee has reasonable opportunities of reading in the course of his employment; or
 - (ii) is made reasonably accessible to him in some other way,and which explains them; and
- (d) stating whether a contracting-out certificate is in force for the employment.

(2) Paragraph (1)(a) to (c) shall not apply to rules, disciplinary decisions, grievances or procedures relating to health or safety at work.

(3) The note need not comply with the following provisions of paragraph (1)—

- (a) sub-paragraph (a);
- (b) in sub-paragraph (b), head (i) and the words following head (ii) so far as relating to head (i); and
- (c) sub-paragraph (c),

if on the date when the employee’s employment began the relevant number of employees was less than twenty.

(4) In paragraph (3) “the relevant number of employees”, in relation to an employee, means the number of employees employed by his employer added to the number of employees employed by any associated employer.

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Employer's duty to give statement of changes

43C.—(1) If, after the date to which a statement given under Article 43 relates, or, where no such statement is given, after the end of the period within which a statement under Article 43 is required to be given, there is a change in any of the matters particulars of which are required by Articles 43 to 43B to be included or referred to in a statement under Article 43, the employer shall at the earliest opportunity and, in any event, not later than—

- (a) one month after the change; or
- (b) where the change results from the employee being required to work outside the United Kingdom for a period of more than one month, the time when he leaves the United Kingdom in order to begin so to work, if that is earlier,

give to the employee a written statement containing particulars of the change.

(2) In a case where the statement under Article 43 is given in instalments, paragraph (1) applies—

- (a) in relation to—
 - (i) matters particulars of which are required to be (whether they are or not) included in the instalment comprising the principal statement; and
 - (ii) other matters particulars of which are included or referred to in that instalment;
- (b) in relation to matters particulars of which are included or referred to in any other instalment; and
- (c) in relation to any change occurring after the end of the two-month period within which a statement under Article 43 is required to be given in matters particulars of which were required to be included in the statement given under Article 43 but which were not included in any instalment,

as it applies in relation to matters particulars of which are required to be included or referred to in a statement under Article 43 not given in instalments.

(3) A statement under paragraph (1)—

- (a) may refer the employee to the provisions of some other document which—
 - (i) the employee has reasonable opportunities of reading in the course of his employment; or
 - (ii) is made reasonably accessible to him in some other way,for a change in any of the matters specified in Article 43(3)(d)(ii) and (iii) and 43B(1) (a) and (c); and
- (b) may refer the employee to the law, or, subject to paragraph (4), to the provisions of any collective agreement which directly affects the terms and conditions of the employment, for a change in either of the matters specified in Article 43(3)(e).

(4) A statement under paragraph (1) may refer the employee to the provisions of a collective agreement under paragraph (3)(b) if, and only if, it is an agreement which—

- (a) the employee has reasonable opportunities of reading in the course of his employment; or
- (b) is made reasonably accessible to him in some other way.

(5) Where after an employer has given to an employee a statement under Article 43—

- (a) either—
 - (i) the name of the employer (whether an individual or a body corporate or partnership) is changed without any change in the identity of the employer; or
 - (ii) the identity of the employer is changed in circumstances in which the continuity of the employee's period of employment is not broken; and

- (b) the change does not involve any change in any of the matters (other than the names of the parties) particulars of which are required by Articles 43 to 43B to be included in the statement,

the person who immediately after the change is the employer shall not be required to give to the employee a statement under Article 43 but the change shall be treated as a change falling within paragraph (1).

(6) A statement under paragraph (1) which informs an employee of a change such as is referred to in paragraph (5)(a)(ii) shall specify the date on which the employee's period of continuous employment began.

Exclusion of Articles 43 to 43C in case of certain employees

43D.—(1) Articles 43 to 43C shall not apply to an employee if—

- (a) his employment continues for less than one month; or
- (b) he is employed under a contract which normally involves employment for less than eight hours weekly.

(2) Articles 43 to 43C shall apply to an employee who at any time comes or ceases to come within the exceptions from those Articles provided for by paragraph (1)(b) and Article 49(3A), and under Article 49(11), as if his employment with his employer terminated or began at that time.

(3) The fact that Article 43 is directed by paragraph (2) to apply to an employee as if his employment began on his ceasing to come within the exceptions referred to in that paragraph shall not affect the obligation under Article 43(2)(b) to specify the date on which his employment actually began.

Power of Department to require particulars of further matters

43E. The Department may by order provide that Article 43 shall have effect as if particulars of such further matters as may be specified in the order were included in the particulars required by that Article; and, for that purpose, the order may include such provisions amending that Article as appear to the Department to be expedient.

PART II

ARTICLE 47 OF THE NO. 2 ORDER, AS SUBSTITUTED

Enforcement of rights under Articles 43 to 45

References to industrial tribunals

47.—(1) Where an employer does not give an employee a statement as required by Article 43 or 43C(1) or 44 (that is to say, either because he gives him no statement or because the statement he gives does not comply with those requirements) the employee may require a reference to be made to an industrial tribunal to determine what particulars ought to have been included or referred to in a statement so as to comply with the requirements of the relevant Article.

(2) Where—

- (a) a statement purporting to be a statement under Article 43 or 43C(1); or
- (b) a pay statement, or a standing statement of fixed deductions, purporting to comply with Article 44 or 45(1),

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has been given to an employee, and a question arises as to the particulars which ought to have been included or referred to in the statement so as to comply with the requirements of the relevant Article, either the employer or the employee may require that question to be referred to and determined by an industrial tribunal.

- (3) In this Article, a question as to the particulars which ought to have been included—
- (a) in a pay statement, or in a standing statement of fixed deductions, does not include a question solely as to the accuracy of an amount stated in any such particulars;
 - (b) in the note required by Article 43B to be included in the statement under Article 43, does not include any question whether the employment is, has been or will be contracted-out employment for the purposes of Part IV of the Social Security Pensions (Northern Ireland) Order 1975.

(4) Where, on a reference under paragraph (1), an industrial tribunal determines particulars as being those which ought to have been included or referred to in a statement given under Article 43 or 43C(1), the employer shall be deemed to have given to the employee a statement in which those particulars were included, or referred to, as specified in the decision of the tribunal.

(5) On determining a reference under paragraph (2)(a), an industrial tribunal may either confirm the particulars as included or referred to in the statement given by the employer, or may amend those particulars, or may substitute other particulars for them, as the tribunal may determine to be appropriate; and the statement shall be deemed to have been given by the employer to the employee in accordance with the decision of the tribunal.

(6) Where on a reference under this Article an industrial tribunal finds that an employer has failed to give an employee any pay statement in accordance with Article 44 or that a pay statement or standing statement of fixed deductions does not, in relation to a deduction, contain the particulars required to be included in that statement by that Article or Article 45(1)—

- (a) the tribunal shall make a declaration to that effect; and
- (b) where the tribunal further finds that any unnotified deductions have been made from the pay of the employee during the period of thirteen weeks immediately preceding the date of the application for the reference (whether or not the deductions were made in breach of the contract of employment), the tribunal may order the employer to pay the employee a sum not exceeding the aggregate of the unnotified deductions so made.

In this paragraph “unnotified deduction” means a deduction made without the employer giving the employee, in any pay statement or standing statement of fixed deductions, the particulars of that deduction required by Article 44 or 45(1).

(7) An industrial tribunal shall not entertain a reference under this Article in a case where the employment to which the reference relates has ceased unless an application requiring the reference to be made was made—

- (a) before the end of the period of three months beginning with the date on which the employment ceased; or
- (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the application to be made before the end of that period of three months.